

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

| | | |
|---|---|---------------|
| In the Matter of |) | |
| |) | |
| Service Quality, Customer Satisfaction, |) | WC Docket No. |
| Infrastructure and Operating Data |) | 08-190 |
| Gathering |) | |
| |) | |
| Petition of AT&T Inc. for Forbearance |) | WC Docket No. |
| Under 47 U.S.C. § 160(c) From Enforcement |) | 07-139 |
| of Certain of the Commission's |) | |
| ARMIS Reporting Requirements |) | |
| |) | |
| Petition of Qwest Corporation for |) | |
| Forbearance from Enforcement of the |) | |
| Commission's ARMIS and 492A Reporting |) | |
| Requirements Pursuant to 47 U.S.C. |) | |
| § 160(c) |) | |
| |) | |
| Petition of the Embarq Local Operating |) | WC Docket No. |
| Companies for Forbearance Under 47 U.S.C. |) | 07-204 |
| § 160(c) From Enforcement of Certain of |) | |
| ARMIS Reporting Requirements |) | |
| |) | |
| Petition of Frontier and Citizens ILECs |) | |
| for Forbearance Under 47 U.S.C. § 160(c) |) | |
| From Enforcement of Certain of the |) | |
| Commission's ARMIS Reporting Requirements |) | |
| |) | |
| Petition of Verizon for Forbearance Under |) | WC Docket No. |
| 47 U.S.C. § 160(c) From Enforcement of |) | 07-273 |
| Certain of the Commission's |) | |
| Recordkeeping and Reporting Requirements |) | |
| |) | |
| Petition of AT&T Inc. For Forbearance |) | WC Docket No. |
| Under 47 U.S.C. § 160 From Enforcement of |) | 07-21 |
| Certain of the Commission's Cost |) | |
| Assignment Rules |) | |

TO: The Commission

**COMMENTS OF THE RURAL NEBRASKA LOCAL EXCHANGE CARRIERS
ON THE INITIAL REGULATORY FLEXIBILITY ANALYSIS**

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November 14, 2008

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SUMMARY

Great Plains Communications, Inc., Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company and Northeast Nebraska Telephone Company (collectively, the Rural Nebraska LECs), by their attorney, hereby submit these comments in response to the Initial Regulatory Flexibility Analysis (IRFA) in the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (NPRM), in the captioned proceedings.

The NPRM violates the Regulatory Flexibility Act by not providing all the information required in the IRFA. The IRFA does not explain why action is being considered, and it does not explain the type of professional skills necessary to implement the proposed reporting requirements. Nevertheless, if the Commission were to proceed with the NPRM, the way to minimize the impact on small entities would be to exempt small incumbent local exchange carriers (ILECs), such as the Rural Nebraska LECs, from any reporting requirement adopted in this proceeding.

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¹ Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (rel. Sept. 6, 2008) [hereinafter NPRM].

² In addition to violating the Regulatory Flexibility Act, the NPRM does not comply with the Paperwork Reduction Act, the Small Business Paperwork Relief Act of 2002, and the Administrative Procedure Act. These issues are addressed in two

BACKGROUND

The Rural Nebraska LECs are small ILECs serving rural areas of Nebraska. In addition to providing local exchange service, the Rural Nebraska LECs and their affiliates provide broadband service and long distance service.

Several of them serve fewer than 1000 lines. They all have fewer than 1500 employees (the size threshold for small businesses under the Regulatory Flexibility Act).³ Some of the Rural Nebraska LECs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).⁴ Given their small size and correspondingly small staff, they are especially impacted by any increased regulatory reporting requirements.

I. THE IRFA DOES NOT SAY WHY ACTION IS NEEDED

The IRFA should contain: "(1) a description of the reasons

separate comments filed today by the Rural Nebraska LECs. Comments of the Rural Nebraska Local Exchange Carriers, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008); Comments of the Rural Nebraska Local Exchange Carriers on the Information Collections, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008).

³ NPRM app. C para. 5.

⁴ NPRM para. 44.

why action by the agency is being considered;" and "(2) a succinct statement of the objectives of, and legal basis for, the proposed rule."⁵ But the IRFA says nothing in this regard.⁶ The IRFA states that the Commission plans to collect data, but does not explain why the data should be collected. Even in the body of the NPRM, the Commission proposes to extend massive reporting requirements to all carriers without once explaining why the Commission needs to collect any data.⁷

II. THE IRFA DOES NOT EXPLAIN THE SKILLS NECESSARY TO PERFORM THE REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED RULES

In the IRFA, the Commission must describe projected reporting, recordkeeping and other compliance requirements, and explain the professional skills necessary for preparation of the report or record.⁸ However, the IRFA states only that the Commission proposes to collect ARMIS Reports or ARMIS-type data via other reporting mechanisms.⁹ The Commission never acknowledges the skills necessary to generate and prepare the

⁵ 5 U.S.C. § 603(b).

⁶ NPRM app. C para. 2.

⁷ See the Comments of the Rural Nebraska Local Exchange Carriers in this proceeding for more details on this issue.

⁸ 5 U.S.C. § 603(b)(4).

⁹ NPRM app. C para. 54.

reports at issue in this proceeding, as required by the Regulatory Flexibility Act.

The ARMIS reports at issue are massive in scope.¹⁰ Even for the ILECs that likely already have ARMIS reporting systems in place, the Commission estimates the staff hours involved in producing the ARMIS Reports 43-05, 43-06, 43-07 and 43-08 (i.e., the ARMIS Reports at issue in this NPRM) to be about 1500 hours per year per company.¹¹

For small ILECs to begin to generate ARMIS-type data, they may need to upgrade switch software, invest in new back office systems, or perhaps hire new staff to manually generate the data for the proposed reports. To generate customer satisfaction data, the small ILECs would need to start surveying customers about whatever issues are determined by the Commission. The cost of modifying internal procedures, upgrading or replacing systems, surveying customers, and hiring staff could range from tens of thousands of dollars to hundreds of thousands of dollars,

¹⁰ They are described online at <http://www.fcc.gov/wcb/armis/descriptions.html>.

¹¹ Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 43,933 (FCC July 29, 2008) (319 hours for each of ARMIS Reports 43-05 and 43-07); Public Information Collection(s) Approved by Office of Management and Budget, 71 Fed. Reg. 29,961 (FCC May 16, 2006) (720 hours for ARMIS Report 43-06); Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 72 Fed. Reg. 5715 (FCC Feb. 7, 2007) (139 hours for ARMIS Report 43-08).

depending on the size of the ILEC and the scope of the regulations that the Commission would adopt. These small ILECs would need to divert resources away from making system improvements that impact end users - just to provide data to the Commission for an undefined purpose.

III. TO MINIMIZE THE IMPACT ON SMALL ENTITIES, THE COMMISSION SHOULD EXEMPT SMALL ILECS

Because the Commission has not defined a need for data and has not explained the skills necessary to collect and report the data, it is impossible to give an accurate estimate of the burden of compliance with the resulting reporting requirements. With all of these unknowns, the only suggestion that can be made to minimize the burdens on small ILECs is to exempt them from reporting requirements, pursuant to the Regulatory Flexibility Act.¹²

IV. THE OMB NIXED A MORE LIMITED DATA COLLECTION IN 2001

This isn't the first time that the Commission tried to expand ARMIS-type reporting to more carriers without providing adequate justification. Eight years ago, in the Biennial Review Service Quality Reporting Requirements Notice, the Commission

¹² 5 U.S.C. § 603(c)(4).

proposed to extend service quality reporting to all ILECs.¹³

That Notice did not provide evidence of any complaints about the quality of service provided by small ILECs. Many small ILECs, including some of the Rural Nebraska LECs, filed comments in that proceeding, and showed that the proposed reporting requirements were unjustified and would be unduly burdensome.¹⁴ In response to those comments, the OMB stated:

The comments we received show a considerable cost for the reporting requirement, but do not include discussion of benefits. Absent a significant benefit being shown, we do not approve the extension in this proposal pursuant to the Paperwork Reduction Act.¹⁵

The same is true here. The Commission has proposed to extend the service quality reporting requirements to all carriers, and has not shown any benefit to imposing the proposed reporting requirements on any carriers, let alone small ILECs such as the Rural Nebraska LECs. And this time, instead of

¹³ 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements, Notice of Proposed Rulemaking, CC Docket. No. 00-229, 15 FCC Rcd. 22,113, 22,122 (2000).

¹⁴ E.g., Rural Local Exchange Carriers Comments, CC Docket No. 00-229 (dated Jan. 12, 2001); Bluestem Telephone Company, Chautauqua & Erie Telephone Corporation, GT Inc dba GT Com Inc, Sunflower Telephone Company, Inc. and Taconic Telephone Corporation Comments, CC Docket No. 00-229 (dated Jan. 12, 2001); Vermont ITCs Comments on Proposed Information Collections, CC Docket No. 00-229 (dated Jan. 3, 2001).

¹⁵ Letter from Edward Springer, OMB, to Judy Boley, FCC, CC Docket No. 00-229 (Jan. 29, 2001).

extending just service quality reporting to all ILECs, the Commission proposes to extend almost all ARMIS-type reporting to all carriers. Under the Paperwork Reduction Act, the Commission cannot impose such unjustified paperwork. Similarly, the Commission cannot impose such unjustified burdens on small entities under the Regulatory Flexibility Act.

The Rural Nebraska LECs respectfully request the Commission to heed the OMB's prior warning about imposing unnecessary reporting requirements on small ILECs, and either: (a) terminate the NPRM; (b) exempt small ILECs from the proposed reporting requirements; or (c) use the NPRM as a precursor to a further notice of proposed rulemaking (as suggested in the Rural Nebraska LECs' Comments filed today).

CONCLUSION

In sum, the Commission has not complied with the Regulatory Flexibility Act. The IRFA fails to explain why the reports are needed and what the objectives are for the reports. The IRFA also does not explain the skills that will be necessary for small ILECs to modify their internal procedures, switches and back office systems in order to generate the data necessary for the reports at issue. If the Commission chooses to continue with this proceeding, the Rural Nebraska LECs suggest that the Commission exempt small ILECs from any reporting requirements

adopted in this proceeding. Such action would be consistent with the Regulatory Flexibility Act and the OMB's prior decision under the Paperwork Reduction Act.

Respectfully submitted,
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November 14, 2008

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 14th day of November, 2008, I have sent a copy of the foregoing to the following:

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